Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

NO. _____

_____

October, 1999

ERNEST McDuffie, III, d.b.a.
D&M Contracting Company

Petitioner,

v.

City of Jacksonville, Florida

Respondent,

Petition For a Writ Of Certiorari
To The Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

Ernest McDuffie, III, pro se
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Jacksonville, FL 32208
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54 pp

Questions Presented

Whether the Circuit Court of the Fourth Judicial Circuit deny Petitioner rights to due process of law: under the 14th Amendment of the U.S. Constitution.

Whether Respondent discriminated against Petitioner in it's administration of construction and professional contracts base on the petitioner race and/or color.

Whether the Respondent has provided a substantial legitimate justification for its practice under Title VI federal regulations.

Whether Respondent had a contract with Petitioner.

Whether the circuit Court of the Fourth Judicial Circuit had the jurisdiction to rule since the contract was funded in part with federal funding.

LIST OF PARTIES

The Parties to the proceedings in the court below; Petitioner, Ernest McDuffie, III, doing business as D & M Contracting Company, a sole proprietorship, located in Jacksonville Florida, and is not a subsidiary of any other corporation.

The Respondent is the City of Jacksonville, Florida

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	9
REASONS FOR GRANTING THE WRIT	21
I. THE SUPREME COURT DECISION CONFLICTS WITH THE U.S. SUPREME COURT'S OPINION IN NORTHEASTERN ASSOCIATED GENERAL CONTRACTORS OF AMERICA ASSOCIATED GENERAL CONTRACTORS OF AMERICA V. CITY OF JACKSONVILLE, FLORIDA.	21
II. THE SUPREME COURT DECISION BRINGS INTO QUESTION THE METHODS USED TO MONITOR A RECIPIENTS UTILIZATION OF CRITERIA OR METHODS OF ADMINISTRATION THAT HAVE THE EFFECT OF SUBJECTING PERSONS TO DISCRIMINATION.	22
III. THE SUPREME COURT DECISION BRINGS INTO QUESTION HOW ADVERSE OF AN IMPACT DOES AGREEMENTS, ARRANGEMENTS OR OTHER SPECIAL CONTRACTS, HAVE ON A GROUP PROTECT BY TITLE VI.	24

Page

CONCLUSION 24

APPENDIX

Supreme Court of Florida, receipt for Petition for writ of Certiorari (9/1/99, 9/16/99) 1a

Supreme Court of Florida, Order dismissing review of petition (Sept. 16, 1999) 2a

District Court of Appeal, 1st District Court Order (Aug. 9, 1999) 3a

District Court of Appeal, 1st District Per Curiam. Affirmed (July 1, 1999) 5a

District Court of Appeal, 1st District Order awarding appallate attorney fees 5a

Circuit Court, 4th Judicial Circuit, Second Amendment to Summary Judgment (Jun 24, 99) 6a

Circuit Court, 4th Judicial Circuit Order denying motion for stay during pendency of appeal (Jun 24, 1999) 8a

Circuit Court, 4th Judicial Circuit, Indez 10a

Duval County Housing Finance Letter (April 18, 1997) 13a

City Ordinance 95-1009-680 (Dec. 12, 1995) 15a

TABLE OF AUTHORITIES

Page

A. CASES

Adams v. Sewell, No. 90-3645, United States Court of Appeals, Eleventh Circuit (1991.).....12

Association of Mexican American Educators v. The State of California No. C-93-3874 WHO (1990) 14,18,23

Brown v. Crawford 906 F. 2d 667 11th Cir. (1990) 19

Celetox Corporation v. Myrtle Neil Catrett, 477 US 317, 91 L Ed 2d 265, 106 Ct 3548, No. 85-198 (1986) 16

Cheezem Dev. Corp. v. Intracoastal Sales and Serv., Inc. 336 So 2d 1210 FLA. 3d Dist CT. APP 1976 11

Crawford v. Lamantia No. 93-2241 USCA, 1st Cir. (1994) 19

Dowell v. City of Apopka 511 DF. Supp 1375 AFF'd 698 F. 2d 1181 (11th Cir 1982 19

Elston v. Talladega County Board of Education 997 F. 2d 1394, 1406 (11th Cir 1993) .....19, 20, 24.

Grove City College v. Bell 465 U. S. 55, 79 (1984) 14, 18

TABLE OF AUTHORITIES

Page

Georgia State Conference of Branches of NAACP v. State of Georgia, No. 84-8771. USCA, Eleventh Circuit (Oct. 29, 1985) 13, 20

Hodges v. Public bldg. Com'n Chicago, 864 F. Supp. 1493, No. 93 C 4329 (1994) 23

Jenkins v. State of Florida Florida Supreme Court June 26 1980..... 9

McDuffie III, d.b.a., D&M Contracting Company v. First Union National Bank US Supreme Ct. No. 97-1533 (1997.) 17, 20

McDuffie III, d.b.a. D&M Contracting Company v. City of Jacksonville Florida No. 99-660 (U.S. Supreme Court Oct. 1999) 13

Monell v. Department of Social Services of the City of New York, et al. 436 U S 658, 56 L. Ed. 2d 611, 98 5ct 2018(No. 75-1914), June 6, 1978 21

Moreno v. Consolidated Rail Corporation, NOS. 94-1231 94-1247 USCA, Sixth Circuit, Nov., 1996 15

NE Florida Chapter of the Associated General Contractors of America v. City of Jacksonville Fla., No. 91-1721 (1993.) 21

Ramirez Leal and Co. v. City Demonstration Agency, No. 75-1024, U.S. Court of APP, Ninth Cir. (Oct. 1976.)..... 17

Page

B. STATUTES AND RULES

Federal Material
United States Constitution
Amend. XIV 9, 11,12

Public Law 88-352 Title VI of the Civil Rights Act of 1964, as amended 9,14,17,18,20,21,22
42 U.S.C. 2000D-4A 12, 15, 21, 23
Executive Order 12250 24
34 CFR Part 100.3(b) 22
34 CFR Part 106.2(b) 22
24 CFR Part 1.4(2)(I) 17
24 CFR Part 570-601(a) 9,17,22
24 CFR Part 570.602(v) 9
13 CFR Part 112.2(b) 9
13 CFR Part 112.2(d) 9
15 CFR Part 8.4(I) 20
15 CFR Part 8.4(b) 20
29 CFR Part 31.3(2) 21,22
49 CFR Part 23.5(i) 22
49 CFR Part 23.5(f) 22
49 CFR Part 21.5(i) 22
49 CFR Part 21.5(v) 22
41 CFR Parts' 5061 24

Local City Material
Jacksonville Ordinance Code Chapter 126, Part 2,3,4,7, and 8 ..... 12, 22

PETITION FOR WRIT OF CERTIORARI

Petitioner Ernest McDuffie, III, pro se' respectfully request that a writ of certiorari is issued to review this order by the State of Florida Supreme Court issued September 16, 1999.

OPINIONS BELOW

The opinion of the State of Florida Supreme Court is reprinted in the Appendix commencing at page 1a.

JURISDICTION

On July 1, 1999, The First District Court of Appeals rule in favor of respondent.

On July 12, 1999, petitioner filed a timely petition for rehearing on August 29, 1999, petitioner filed a notice of appeal to the State of Florida Supreme Court on September 16, 1999 The State of Florida Supreme Court dismissed petitioner petition for review, stating: The case of Jenkin v. State 385 So. 2d 1356 (Fla. 1980)

Jurisdiction of this Court exists under, Public Law 88-352, Title VI of the 1964, as amended and 28 U.S.C. 1254.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

Amendment XIV

The Fourteenth Amendment to the United States Constitution provides in relevant part: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law' nor deny to any person within its jurisdiction the equal protection of the laws.

Section 601

Public Law 88 - 352 Title of the Civil Rights Act of 1964, as amended, in relevant part: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits, of or be subjected to discrimination under any program or activity receiving Federal assistance."

42 U.S.C. 2000d-4a

42 U.S.C. 2000d-4a, provides in relevant part: "that a program or activity" (or just a program") includes "all the operations of" any one of a number of entities, subject only to the provso that at least one (or, as the statute provides, "any") "part of" that entity's operation "is extended Federal financial assistance."

Executive Order 12250 1-201(a)(d)1-201
Coordination of Non-discrimination Provisions, provides in relevant part" The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); Any other provision of Federal statutory law which provides in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal assistance.

13 CFR Part 112.2(b)
Code of Federal Regulation 13 CFR Part 112.2 (b) provides in relevant part: "The term Federal financial assistance includes: (1) grants and loans of Federal funds: (20 the grant or donation of Federal property and interest in property; (3) the detail of Federal personnel: (4) the sale and lease of, and the permission to use on other than a casual or transient basis, Federal property or any interest in such property without consideration or at a nominal consideration which reduced for the purpose or assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purpose the provision of assistance."

13 CFR Part 112.2(d)
Code of Federal Regulation 13 Part 112.2(d), provides in relevant part: "The terms applicant and recipient mean, respectively, one who applies of and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section, the

term recipient also shall be deemed to include subrecipients of SBA financial assistance, i,e., concerns which secondarily receive financial assistance form the primary recipients of such financial assistance."

15 CFI Part 8.4(1)(b)(v)(Vii)
Code of Federal Regulation 15 CFR Part 8.4(1)(b)(v)(vii) provides in relevant part: A recipient of Federal financial assistance, or other party subject to this part under any program to which this part applies, shall not, participate directly or through contractual or other arrangements, in any act of curse of conduct which, on the ground of race color, or national origin: (v) Treats a person differently from others in determining whether he satisfies any admission enrollment, quota, eligibility, membership, or other requirement, or condition which persons that meet in order to be provided any service, financial aid, or other benefit provided under the program. (vii) Denies a person the same opportunity or consideration given others to be selected as a contractor, subcontractor, or subgrantee when a program is applicable hereto.

24 CFR Part 1.4(2)(1)
Code of Federal Regulation, 24 CFR Part 1.4(2)(1), provides in relevant part: "A recipient, in determining the types of ... services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such ... services, financial aid, or other benefits will be provided under any such program or activity, or the class of person to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or method of administration which have the effects of subjecting persons to discrimination because of their race, color,

or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin."

24 CFR Part 570-601

Code of Federal regulation, 24 CFR Part 570-601(a), provides in relevant part: "A recipient may not, treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or to other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

24 CFR Part 570.602(v)

Code of Federal regulation 24 CFR Part 570.602(v), provides in relevant part: "A recipient may not, treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

29 CFR Part 31.3(2)

Code of Federal "Regulation 29 CFR Part 31.3(2) provides in relevant part: "A recipient, in determining the types of service, financial aid, or other benefits, or facilities which will be provided under such program, or the class of individuals to whom, or the situation in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangement, utilize criteria or methods of administration which have the

effect of subjection individuals to discrimination because or race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

34 CFR Part 100.3(b)
Code of Federal Regulation 34 CFR Part 100.3(b), provides in relevant part: "Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on grounds of race, color, or national origin:"

34 CFR Part 106.2(h)
Code of Federal Regulation, 34 CFR Part 106.2(h), provides in relevant part: "Recipient means any State or political subdivision thereof, or any instrumentality of a State of political sub-division thereof, any public or private agency, institution, or organization or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receive or benefits from such assistance, including any submit, successor, assignee, or transferee thereof."

49 CFR Part 21.5v
Code of Federal Regulation, 49 CFR Part 21.5(v) provides in relevant part: A recipient may not, "treat a person differently from others in enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

49 CFR Part 23.5(i)

Code of Federal Regulation, 49 CFR Part 23.5(I), provides in relevant part: "Minority means a person who is a citizen or lawful permanent resident of the United States and who is: (a) Black (a person having origins in any of the black racial groups of Africa ...); (f) Members of other groups, or individuals, found to be economically and socially disadvantaged by the Small Business' Act, as amended(15 U.S.63(a)."

Ordinance Chapter 126, Parts 2,3,4,7,8, and Part 401

City Ordinance Chapter 126, Parts 2,3,4,7,8 and Part 401 provides in relevant part: 126.401 Policy of city. It is hereby declared to be the policy of the city to assure equal opportunities to every person, regardless of race, religion, sex, color, age, handicap, or national origin, in securing or holding employment in a field of work of labor for which the persons qualified. It is also the policy for the city that persons comply with this policy and will not expend public funds in a manner as will encourage, perpetuate or foster discrimination.

City Ordinance Chapter 126. Part 404(a)

City of Jacksonville, Florida Ordinance Chapter 126. Part 404(a), provides in relevant part: City of Jacksonville, Florida Ordinance Chapter 126. Part 404(a), provides in relevant part: Nondiscrimination provisions in all city contracts. All city contracts shall contain the following provisions: (a) The contractor represents that he has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.

City Ordinance Chapter 126 Part 801 City Ordinance Chapter 126. 801, Federal Affirmative Action Compliance 126.801 intent. It is the intent of the

Council that to the extent that federal affirmative action compliance is required to be implemented by the city in conjunction with the bidding ad awarding of city contracts that the city shall assure such compliance. This compliance shall include but not be limited to the provisions of Presidential Executive Order 11246 and those federal laws and regulations set forth in s. 400.103, Ordinance Code. "History - Ord. 92-1001-667, s.1."

126.802 Enforcement. It shall be the responsibility and duty of the mayor to carry out the intent of the Council as expressed in s. 126.801 herein. History -Ord. 92-1001-667, s.1.

STATEMENT OF THE CASE

This maliciously harassment and discrimination compliant is brought to appeal pursuant to the State of Florida Title VI of The Civil "Rights Act of 1964 as amended; State of Florida Edition 255.20, State of Florida Edition 255.101, code of Federal Regulations. (C.F.R.) 24 parts 0-146 (C.F.R.) 24 parts 500-600, (C.F.R.) 13 parts 101-318: and the 14 Amendment of The U.S. Constitution.

The Respondent City of Jacksonville Florida on 8/7/97 filed complaint to foreclose mortgage. On 8/2/97 Petitioner answer an affirmative defense to Respondent claim; 3/19/98 case was closed; judgment entered in favor of Respondent on 3/24/98 petitioner filed motion for an order to amend and notice of appeal.

On July 1, 1999 The First District Court of Appeals rule in favor of Respondent.

On July 12, 1999, Petitioner filed a timely petition for rehearing.

On August 14, 1999, petitioner filed a timely motion for a stay of mandate pending petition for certiorari.

On August 29, 1999, petitioner filed a notice of appeal to the State of Florida Supreme Court Appeals from a judgment or order of an appeal court.

On September 16, 1999, the State of Florida Supreme Court dismissed petitioner petition for review. Stating: the case of Jenkin v. State 3850.2d 1356 (Fla. 1980).

Background

Pursuant to the rule of Civil procedure summary judgment is not appropriate if initial burden of production is not met. Respondent failed to meet its initial burden of production prior to filing its motion for summary judgment.

Moreover, affidavits and evidentiary evidence were in the record to support the petitioner constitutional standing prior to July 1, 1999, was overlooked or ignored.

The question of the lower court's jurisdiction to hear this action was raised on several previous occasions specifically August 21, 1997, February 19, 1998 and in brief filed November 11, 1998.

Respondent filed two separate actions against the petitioner to litigate the same alleged rights, using an impermissible practice of splitting the action into two separate cases, even though the complaint was under the same contact.

The action on April 6, 1998, November 24, 1998, and July 1, 1999, does not take in consideration: (A) Property is a part of a defaulted "oral contract" between the Respondent City of Jacksonville Department of Housing and Urban and Rehabilitation and petitioner.

The promise by the City of Jacksonville's Department of Housing and Urban and Rehabilitation to provide funding for Housing acquisition, clients for home to be rehabilitated, assist clients with start-up mortgage money, and provide developers' cost after the sale of the house, was breached. D & M Contracting Company was

to find house to rehab, rehabilitate houses and provide training under the Skills Work Innovative Force Training (S.W.I.F.T.) Program.

The Respondent City of Jacksonville Department of House and Urban and Rehabilitation failure to perform conditions of the contract, excuses petitioner from further performance (See Cheezem Dev. Corp. V. Intercoastal Sales and Serv. Inc. 336 So 2d 1210 Fla. Dist Ct. app 1976).

Accounting on the face of the foreclosure instrument at paragraph 2, showing monetary advances for property rehabilitation is indicative of a contract between the parties.

Additionally, a premature summary judgment also denies petitioner Ernest McDuffie III d.b.a. D & M Contracting Company his constitutional rights provided to Black African-Americans under the Equal provision of The U.S. Constitution 14 Amendment which states in Section 1.

"All persons born or naturalized in The United States, and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of Life, Liberty; or property without due process of Law: nor deny to any person within its jurisdiction the equal protection under the Law."

Black African-American businesses in Jacksonville, Florida are denied participation in public contracting opportunities, they are deprived of Liberty

that is provided under the 14th Amendment of the Constitution.

The freedom and privilege to enjoy all the rights granted by the United States and a particular state's constitution, as well as other rights such as right to earn a living, acquire knowledge, and marry, refers to the fullest scope of freedom one has, but at the same time limits those freedoms so as not to interfere with another persons exercise of them. "The Due Process clause requires that termination of a property right to continued employment must be preceded by notice and an opportunity for a hearing on the matter." Adams v. Sewell. No. 90-3645, United States Court of Appeals, Eleventh Circuit, Nov. 4, 1991.

Pursuant to 42.2(2), when government erects a barrier that makes it more difficult for members of one group to obtain benefit it is for members of another group, member of former group seeking to challenge barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. Also, the denial of equal treatment resulting from imposition of the barrier, not ultimate inability to obtain the benefit but for the barrier in order to establish standing. Also, the denial of equal treatment resulting from imposition of the barrier, not ultimate inability the benefit gives standing for equal protection under the 14th Amendment of the United States Constitution.

The Respondent is using the provision of chapter 126 of the City's Purchasing Code part 2(126.202(K) which states: The Deputy Director of Central Services (Chief Purchasing Officer) shall remove from the bidders' list the name of a contractor who is more than sixty days in

default on a contract he has with the city or who is in default by virtue of unsatisfactory performance on a contract he has with the city, unless the default is caused by some condition or event beyond the control of the contractor. No contractor shall be entitle to have his name restored to the bidders list unless and until he shall cure the default to the satisfaction of the Deputy Director of Central Services (Chief Purchasing Officer) and shall have paid to the city all damage occasioned by the default. Repeated or recurring defaults by a contractor shall be sufficient reason for the Deputy Director of Central Services (Chief Purchasing Officer) to remove the contractor's name permanently from the bidders' list, subject to review by the Awards Committee and approval by the Mayor."

By using the litigation (Case No. 99-66, US Supreme Court) McDuffie v. City Jacksonville, the Respondent erected a barrier that has blocked the Petitioner from contractual opportunities from 1996 through 1999.

In the order dated July 1, 199, the court did not state that the Petitioner did not make a prima facie case under Title VI, Federal Regulations. As stated in Ga. St. NAACP v. State of Georgia No. 84-8771. United States Court of Appeals Eleventh Circuit Oct. 29, 1985, "plaintiff, who asserts disparate 2000d et seq. must show by preponderance of evidence that facially neutral practice has racially disproportionate effect, whereupon burden shift to defendant to prove substantial legitimate justification for its practice; plaintiff then may ultimately prevail disproportionately or proof that legitimate practices are pretext for discrimination." Further, to establish prima facie case of disparate impact base on race, plaintiffs must show that defendants' racially neutral practice detrimentally affect persons of particular

race to greater extent than other races. Civil Rights Act of 1964 601 et seq., 42 U.S.C.A. 200d et seq.

In this action, the Appellee did not provide a substantial legitimate justification for its practice of violations under Title VI and Federal regulations. Title VI - Nondiscrimination in Federally assisted programs, Sec. 601. states no person in the United States shall, on the ground of race, color or national origin, be exclude from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

As cited in the Grove City College v. Terrel H. Bell, 465 US 55.79 L. Ed. 2d 516 No. 82-792. argued Nov. 29, 1983: decided Feb. 28, 1984, a "recipient" is defined in 34 CFR, 106.2(h) 1983 to include: "[A]nd public or private agency, institution or organization or other entity or any person , to whom federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits form such assistance ..." It Further states: "The Title IX was patterned after Title VI of the Civil Rights Act of 1964 ..... Except for the substitution of the word "sex" in Title IX to replace the words, "race, color, or national origin in Title VI, and for the limitation of Title IX to "education" programs or activities,the two statutes use identical language to describe their scope."

The case Association of Mexican American Educators v. The State of California Commission on Teacher Credentialing No. C-92-3874 WHO. U.S. District Court N.D. California, Aug. 25, 1993, states Plaintiffs under Title VI of Civil Rights Act, which prohibits use of federal funds to subsidize racial discrimination, may maintain private right of action

based on administrative regulations promulgated pursuant to Title VI: Supreme court has held that those regulations are valid and that they further congressional purpose of withholding federal funds from discriminatory practices, Civil Rights Act of 19645, 601, as amended, 42 USCA 2000d.

Pursuant to the State of Florida Edition 255.101 contracts for public construction works: Utilization of Minority Business Enterprises and Edition 255.20, "When construction is financed in whole or in part from federal funds and where federal provision for utilization of Minority Business Enterprise apply. This section shall not apply." In this action Funds met the criteria of "Financed in whole or in part from federal funds."

Further, Petitioner Ernest McDuffie III, d.b.a. D& M Contracting Company is a Black African - American and a small business administration section 8(a) Small Business Act Section 3. under the Housing and Urban 'development Act of 1968 (12USC 1701U), and a State of "Florida certified General Contractor.

The Respondent City of Jacksonville is a recipient of federal financial assistance funds in this action. Pursuant to Moreno v. Consolidated Rail Corporation, nos. 94-1231,94-1247 United States Court of Appeals Sixth Circuit, Nov., 1996, "by accepting federal funds for its railroad crossing improvements, railroad was a 'recipient of federal assistance' within meaning of the Rehabilitation Act, even though Federal funds came to the railroad through state of Michigan rather than ... by United States directly, and members of traveling public were ultimate beneficiaries of funds in issue; railroad owned and operated railroad would otherwise have had to pay out of its own funds for obligation that railroad would otherwise have had to pay out of it's

funds, subject in some case to equal sharing of costs with local public authorities."

In this summary judgment action, the Petitioner was denied discovery. Pursuant to Celotex v. Catrett, 477 US 317,91L Ed 2d 265.106Ct. 2548 (No. 85 - 198) June, 1986, "allows a summary judgment motion to be denied, or the hearing on the motion to be continued, if the non-moving party has not had an opportunity to make full discovery."

Motion for summary judgment of foreclosure and for attorney's fees is prematurely filed. Respondent complaint of foreclose mortgage of real property was received by petitioner on August 22, 1997, and the respondent motion for summary judgment was received by Petitioner on February 10, 1998. The court ruled in Celotex, "no serious claim can be made that respondent was 'railroaded by a premature motion for summary judgment, since the motion was filed until one year after the action was commenced and since the parties had conducted discovery." The Respondent in this action, filed for summary judgment six months after the a action was commenced and no discovery by the petitioner further petitioner who is proceeding pro'se is unable to post a supersedes bond.

The filing of this action in state court, when the Respondent had full knowledge the Homeownership Program was funded in whole or part with federal funds, serves only as a tool of maliciously harassment against the petitioner.

The Respondent defaulting on petitioner's contract and failed or neglected to comply with previsions of the Home Rental Rehabilitation Program, Homeownership Program and the Federal Home

Partnership Act, Federal Home Partnership Act, (Code of Federal regulation) C.F.R. 24 part 92. The property cited in this action was covered under the Homeownership/Ship programs. The Home/Ship Programs are part of litigation currently pending against the Respondent. (McDuffie v. City of Jacksonville Florida, No.99-660 US Sup. Ct.

As in this case Respondent is a recipient of federal financial assistance funds through the entity City Department of Housing and Urban Development affordable housing and rehabilitation's operation. Therefore, the Respondent violated the petitioner's Civil Rights pursuant to Public Law 88-352 Title VI of the Civil Rights Act of 1964, as amended and C.F.R. 24 part 570.600 through 570.613 which mandates nondiscrimination in federally assisted programs. No person in the United State shall on the ground of race, color or national origin be denied the benefits of or be subjected to discrimination under any program or activity receiving federal assistance.

Respondent did not make the greatest extent feasible to complete the renovation contract on the two parcels of property with Petitioner Ernest McDuffie III d.b.a. D & M Contracting Company.

Pursuant to Ramirez Leal & Co. plaintiff - appellant v. City Demonstration Agency. Defendant - Appellee's No 75-1024 United States Court of Appeals Ninth Circuit Oct. 1976, as stated: They were required, to the greatest extent feasible - we think that greatest extent means what it says the maximum an d that the defendant; were therefore obliged to take every affirmative action that they could properly take.

As cited in the case of Grove City College v. Terrel H. Bell 465 US 55, 79L, Ed. 2d 516 No. 82-792, a "recipient" is defined 34 C.F.R. 106.2(h) to include "Any" public or private agency, institution or organization or other entity or any person. To whom Federal financial Assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance ——.

Pursuant to the Association or Mexican American Educator v. The State of California Commission on Teacher Credentialing, No. C-92-3874 WHO, US District Court N.D. States: Plaintiff under Title VI of the Civil Rights which prohibits use of Federal funds to subsidize Racial discrimination may maintain private rights of action based on administrative regulation promulgated pursuant to Title VI; Supreme Court has held that these regulations are valid and tat they further congressional purpose of withholding "Federal funds for discriminatory practice Civil Rights Act 1964 601 as amended 42 USCA 2000d.

Further a premature summary judgment also denies the Petitioner Ernest McDuffie III d.b.a. D & M Contracting Company his constitutional rights provided to Black African-Americans under the Equal provision of The U.S. Constitutional 14 Amendment which states in Section 1.

"All persons born or naturalized in The United States, and subject to the jurisdiction thereof are citizens of The United States, and subject to the jurisdiction thereof are citizens of The United States and to the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of The United States" nor shall any state deprive any person of Life, Liberty or property without due

process of Law; nor deny to any person within its jurisdiction the equal protection under The law."

As the statues makes clear, and as stated in case law, plaintiff must demonstrate that the defendant was recipient of federal financial assistance. See Dowdell v. City of Apopka FL 511 F. supp. 1375. 1375 (M.D. Fla. 1981)AFF'd 698 F. 2d. 1181 (11th cir 1982). According to Title VI case, "Hodges by Hodges v. Public Building Commission of Chicago, "No. 93 c 4329. U.S District Court, N. O. Illinois, Eastern Division, Sept. 14, 1994, where a similar defense of not receiving assistance was given, the court stated: "All of the parties place far too much importance on whether or not the defendants actually receive federal funding. In the post CRA era, whether or not an entity receives federal funds is no longer the sine qua non of a title VI action. Consistent with the broad definition of "program or activity" courts have rejected such a formalistic approach in favor of examining the defendant's relationship to the entity receiving the federal funds."

According to the case of Brown vs. Crawford, No. 89-5927 USCA, 11th Cir (1990) 2544, the court states; while a pro'se litigant does not escape essential burden under summary judgment standards of establishing that there is genuine issue as to a fact material to his case in order to avert summary judgment, court of appeals must view factual inferences favorably toward partly not moving or summary judgment and pro'se complaints are entitled to liberal interpretation by court.

The court stated "Elston vs. Talladega County Board of Education 997 F. 2d 1394, 1406 (11th Cir. 1993), "When regulated are promulgated pursuant Title VI, they "may validly proscribe. Actions having a

disparate impact on groups protected by the Statue, even if these action are not intentionally discriminatory." I'd, (citation omitted). The court ruled in McDuffie v. First Union Bank the regulations cited by the Plaintiff appear to proscribe action "having a disparate impact "on groups protected by the statue" 15 C.F.R. part 8, subpart a, sec 8.4(b)(2)- (3) and compare with Elston, 999 F. 2d at 1407 N. 12 Quoting relevant department of education Title VI Regulation. For purpose of disparate impact standard." (McDuffie v. First Union - No. 97-1533).

In this current action, the Petitioner has made a prima facie case under Title VI code of Federal Regulation (C.F.R.) 24, therefore the burden shifts to the respondent to prove substantial legitimate justification for its practice. As stated in Georgia State Conference of Branches NAACP - Appellants v. State of Georgia - Appellees No. 84-8771. United States Court of Appeals Eleventh Circuit Oct. 29 1985. The court stated: "Plaintiff, who asserts disparate impact claim under Title VI of Civil Rights Act of 1964 601 et seq., 42 U.S.C.A. 2000d et seq. must show by preponderance of evidence of that facially neutral practice has racially disproportionate effect, whereupon burden shift to defendant to pro'se substantial legitimate justification for its practice; plaintiff then may ultimately prevail by proffering equally effective alternative practice which results in less racial disproportion or proof that legitimate practices are pretext for discrimination."

The court also stated, "generally, to establish prima facie case of disparate impact base on race, plaintiffs must show that defendants' racially neutral practice detrimentally affects persons of particular race to greater extent than other races. Civil rights Act of 1964 601 et seq., 42 U.S.C.A. 200d et seq." In this case, the Respondent have not provided a substantial

for its practice of violations under Title VI Federal regulations (C.F.R. 24).

Monell v. Department of Social Services of the city of New York, et al. 436 US 658, 56 L. Ed. 2d 611, 98 5 ct 2018 (no. 75-1914), June 6, 1978, held that local governments, municipal corporations, and school boards are persons subject to liability under 42 USCS 1983 for violating another persons federally protected rights, and thus are not wholly immune from suit under the statue covering legal as well as natural persons." Civil Rights - 12.5-Liability for violations - Local governing bodies, as persons; are subject to liability under 42 USCS - 1993 for violating another person's Federally protected rights, local governing bodies can be sued directly under 1983 for monetary, declaratory of injunctive relief where the action that is alleged to be unconstitutional implemented or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by the body's officers."

REASONS FOR GRANTING THE PETITION

I. THE STATE OF FLORIDA SUPREME COURT DECISION CONFLICTS WITH THE U.S. SUPREME COURTS THE ASSOCIATED GENERAL CONTRACTOR OF AMERICA v. CITY OF JACKSONVILLE FLORIDA NO, 91-1721.

The Supreme Court in Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville Florida, maintained that when government erect a barrier that makes it more difficult for members of one group to obtain benefit than it is for members of another group, member of former group seeking to challenge barrier need not allege that he would have obtained the benefit but for the barrier in

order to establish standing. Further, the denial of equal treatment resulting from imposition of the barrier, not ultimate in ability to obtain the benefit gives standing for equal protection under the 14th Amendment of the United States Constitution. By using the provisions of Chapter 126 of the City's Purchasing Code, the government erected a barrier that blocked the Petitioner an African-American business owner.

A barrier (126 of the Purchasing Code) erected by City of Jacksonville Florida government makes it more difficult for Petitioner a Black African-American group member to obtain benefit than it is for members of another group. Additionally, rights protected by the United States Constitution of Equal Protection and due process was violated by the City government through the use of Chapter 126 of Purchasing Code.

II. THE SUPREME COURT'S DECISION BRINGS INTO QUESTION A RECIPIENTS' UTILIZATION CRITERIA OR METHODS OF ADMINISTRATION THAT HAVE THE EFFECT OF SUBJECTING PERSONS TO DISCRIMINATION.

The Respondent intentionally treated the Petitioner different in the administration of construction and professional contracts, thereby violating his civil rights that are protected under Title VI of the Civil Rights Act, of 1964 as amended, Public Law 88-352, 29 CFR part 31.3(2), 15 CFR Part 8.4(1)(b)(vii), 24 CFR part 570.602(v), 24 CFR Part 1.4, 13 CFR Part 112.2b, d and 34 CFR part 106.2(b), and 49 CFR Part 23.5(i).
"Recipient means any State or political subdivision thereof, or any instrumentality of a State or political

subdivision thereof, any public or private agency, institution, or organization, or to the entity, or any said person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receive or benefits from such assistance, including any submit, successor, assignee, or transferee thereof." Additionally, 42 U.S.2000d-4a, provides that a "program or activity (or just a program') includes all the operations of "any one of a number of entities, subject to the proviso that at least or (or, as the statue provides, Federal financial assistance." The same principle applies in this case, so long as any part of that Respondent "operations" receive federal financial assistance," "all" of that city "operations", programs or activities" and are subject to Title VI.

Title VI case Hodges v. Public Building Commission of Chicago, No. 93 4329, U S District Court, N.D. Illinois, Eastern Division, Sept. 14, 1994, where a similar defense of not receiving federal assistance was given, the Court stated, "all of the parties place far too much importance on whether or not the defendants actually receive federal funding. In the post CRA era, whether or not an entity receives federal funds is no longer the sine qua non of a Title VI action. Consistent with the broad definition of "program or activity" courts have rejected such a formalistic approach in favor of examining the defendant's relationship to the entity receiving the federal funds."

In the case Association of Mexican American Educators v. The State of California Commission on Teachers Credentialing. No. C-92-3874 WHO, U.S. District Court, N.D. California, Aug. 25, 1993, the Court states: "Plaintiffs under Title VI of Civil Rights Act, which prohibits use of federal funds to subsidize

racial discrimination, may maintain private right of action based on administrative regulations promulgated pursuant to Title VI; Supreme Court has held that those regulations are valid and that they further congressional propose of withholding federal funds from discriminatory practices."

III. THE SUPREME COURTS DECISION BRINGS INTO QUESTION HOW ADVERSE OF IMPACT DOES AGREEMENTS, ARRANGEMENT OR OTHER SPECIAL CONTRACTS, HAVE ON A GROUP PROTECTED BY TITLE VI.

The court stated "Elston vs. Talladega County Board of Education 997 F. 1394, 1406 (11th Cir. 1993), "when regulations are promulgated pursuant Title VI, they "may validly proscribe actions having a disparate impact on groups protected by the Statue, even if these actions are not intentionally discriminatory." According to Elston v. Talladega, "to establish liability under the Title VI regulation disparate impact scheme a plaintiff must – demonstrate by a preponderance of the evidence that a facially neutral practice has a disproportionate adverse effect on a group protected by Title VI, 97 F. e2d at 1407.

In this current action, Petitioner has on file in court records eight affidavits, from African American business owners. The affidavits were filed with the court on February 19, 1998, see exhibit book 1 pages 1 through 65. The court on the other hand stated, "however, he has not identified one document showing that the defendant's action had a disproportionate effect on African-Americans or that

race played any role whatsoever in defendant actions."

The Respondent, in Chapter 126 of the Purchasing Code admits that African American business enterprise, has suffered from the effects of past or present discrimination within the business community of the City of Jacksonville, and which has been certifies such under 5.126.606. Active participation in the business community of the City of Jacksonville creates a presumption that the applicant has suffered from the effects of past or present discrimination within such business community."

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.
The Supreme Court of Florida, deprived the petitioner of due process.

Respectfully submitted,

Ernest McDuffie, III, pro se
8803 Yeoman Drive
Jacksonville, Fla. 32208
904-765-3149

December _____, 1999

APPENDIX

DEBBIE CAUSSEAUX, ACTING CLERK
Supreme Court of Florida
500 SOUTH DUVAL STREET
TALLAHASSEE 32399-1927
(850) 488-0125

Mr. Ernest McDuffie
8803 Yeoman Drive
Jacksonville, Florida32208

9/16/99 filed 9/1/99
ERNEST MCDUFFIE, etc.
vs.
CITY OF JACKSONVILLE, et al.
CASE NO. 96,429
DCA-1 NO. 1998-1208

I have this date received the below-listed pleadings or documents:

Your Petition for Writ of Certiorari has been treated as a Notice to Invoke Discretionary Jurisdiction filed in the DCA-1 ON 8/30/99 w/copy of DCA opinion.

$250.00 Filing Fee, receipt no. R-991260.

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

Debbie Causseaux
Acting Clerk Supreme Court

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

DC/bh
CC. Hon. Jon S. Wheeler, Clerk
Mr. Thomas R. Ray
Mr. Donald L. Smith

Supreme Court of Florida

THURSDAY, SEPTEMBER 16, 1999

ERNEST MCDUFFIE, etc.,
Petitioner, **CASE NO. 96,429**

vs. **District Court of Appeal**
1st District - No. 1998-1208

CITY OF JACKSONVILLE, et. al.,
Respondents.

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy
TEST:

H
cc: Hon. Jon S. Wheeler; Clerk
Hon. Henry W. Cook, Clerk
Hon. Hugh A. Carithers, Jr., Judge

Debbie Causseaux
Acting Clerk of Supreme Court

Mr. Ernest McDuffie
Mr. Thomas R. Ray
Mr. Donald L. Smith

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

August 9, 1999

CASE NO.: 1998-1208
L. T. No.: 97-4521 CA

Ernest Mcduffie, Dba, D & M. Contracting Co.	**v. City Of Jacksonville, Etc.**

Appellant / Petitioner(s), **Appellee/ Respondent(s)**

BY ORDER OF THE COURT:

Appellant's motion filed July 14, 1999, for rehearing is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

Served:

Ernest Mcduffie, III Donald L. Smith Thomas R. Ray

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ERNEST MCDUFFIE, DBA D & M CONTRACTING CO.,
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

V.

CASE NO. 98-1208

CITY OF JACKSONVILLE, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AFFORDABLE HOUSING AND REHABILITATIONS OPERATION,

Appellee.

_____/

Opinion filed July 1, 1999.

An appeal from the Circuit Court for Duval county. Hugh A. Carithers, Judge

Appellant pro' se.

Thomas R. Ray of Holbrook, Akel, Cold, Stiefel & Ray, P.A., Jacksonville, and Donald L. Smith, Jacksonville, for Appellee.

PER CURIAM.

AFFIRMED.

ALLEN, LAWRENCE, AND BENTON, JJ., CONCUR

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

July 1, 1999

CASE NO.: 1998-1208
L.T. No.: 97-4521 CA

Ernest Mcduffie, Dba, D & M. Contracting Co. **v.** **City Of Jacksonville, Etc.**

Appellant / Petitioner(s), **Appellee / Respondent(s).**

BY ORDER OF THE COURT:

Appellee's motion for appellate attorney fees is granted. This case is remanded to the circuit court for Duval County to determine the amount thereof, if the parties are unable to agree on an amount.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

JON S. WHEELER, CLERK

Served:

Ernest Mcduffie, Iii **Donald L. Smith** **Thomas R. Ray** **Henry W. Cook**

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA
CASE NO. 97-4521-CA; DIV. CV-C

CITY OF JACKSONVILLE, DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT
AFFORDABLE HOUSING AND
REHABILITATIONS OPERATION,
Plaintiff,

vs.

ERNEST McDUFFIE, III, et. al.,
Defendant(s).

SECOND AMENDMENT TO SUMMARY JUDGMENT OF FORECLOSURE

This action was heard on Plaintiff's Second Motion to amend Summary Judgment of Foreclosure, and it is ADJUDGED that:

1. The Summary Judgment of Foreclosure dated March 19, 1998 is amended to provide a new foreclosure sale date of July 23, 199 between the hours of 11:00 a.m. and 2:00 p.m.

2. In all other respects, the Summary Judgment of Foreclosure dated March 19, 1998 shall remain unchanged.

Ordered at Jacksonville, Florida, on ORDER ENTERED JUN 24, 1998.

/s/ Hugh A. Carithers, Jr.

Circuit Judge

Copy to:

Donald L. Smith, Esquire
Moore, Smith & Moore
500 North Ocean Street
Jacksonville, Fl 32202

Ernest McDuffie, III and
Magadeline W. McDuffie
8803 Yeoman Drive
Jacksonville, Fl 32209

Walter Butcka,Esquire
Post Office Box 8001
Sanford, FL 32771-8001

Kevin L. Davis
11040 Raley creek Dr., S.
Jacksonville, FL 32225

Storage Trailer Rental, Inc.
c/o John L. Murray
14546 longview Drive South
Jacksonville, FL 32223

Commercial Interiors, Inc.
c/o James E. Shirley
4501 Irvington Avenue
Jacksonville, FL 32233

First Union National Bank
c/o Judy Alexander
225 Water St. 8th Floor
Jacksonville, Fl 32202
Jacksonville, FL 32202

Barnett Recovery Corp.
c/o Robert Bieri
9000 Southside Blvd.
Bldg 700
Jacksonville, FL 32256

Floor Expressions, Inc.
c/o Walter Stedeford
2039 Park Street
Jacksonville, FL 32204

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.; 97-4521-CA

DIVISION: CV-C

CITY OF JACKSONVILLE, DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT
AFFORDABLE HOUSING AND
REHABILITTIONS OPERATION,

Plaintiff,

vs.
ERNEST McDUFFIE, III, et. al.,

Defendant (s).

ORDER DENYING MOTION FOR AN
ORDER
TO STAY SUMMARY JUDGMENT
DURING PENDENCY OF APPEAL

THIS CAUSE came on for review upon the defendant's Motion for an Order to Stay summary Judgment during Pendency of Appeal made June 1, 1998 and the court having reviewed the pleadings and considered the same, and being further advised in the

premises and finding that Mr. McDuffie is unwilling or unable to post a supersedes bond, it is

ORDERED and ADJUDGED

1. The Defendant's Motion for an Order to Stay Summary Judgment during Pendency of Appeal is hereby DENIED.

2. Unless the Defendants posts a supersedes bond or other Order of Stay is entered. the Clerk of Court shall conduct the sale as set forth in the Second Amendment to Summary Judgment of Foreclosure entered in the above styled action notwithstanding the filing of any other or further motions.

DONE and ORDERED at Jacksonville, Duval County, Florida, this 24th day of June, 1998.

Hugh A. Carithers, Jr.

Circuit Judge

IN THE CIRCUIT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CIRCUIT CASE. 97-4521-CA

DCA NO 98-1208

ERNEST MCDUFFIE, ETC.

APPELLANT

VS.
CITY OF JACKSONVILLE, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ETC.

APPELLEE

INDEX

DATE FILED	INSTRUMENT	PAGE
08/07/97	COMPLAINT TO FORECLOSE MORTGAGE	001-011
08/07/97	LIS PENDENS,, BK 8693 PG 1387, 3 PGS	012-014
08/15/97	ANSWER/SUNNILAND CORPORATION	015-016
10/17/97	DEFAULT.STORAGE TRAILER RENTAL,INC.FIRST	017

PAGE 2

UNION NATIONAL BANK OF FLORIDA, KEVIN L. DAVIS BARNETT RECOVERY CORPORATION,FLOOR EXPRESSIONS, INC.

10/01/97	MOTION FOR DEFAULT	018
10/01/97	NON-MILITARY AFFIDAVIT	019
10/2/97	NOTICE OF FILING CORRECTED EXHIBITS/ ATTACHED	020-032
11/10/97	DEFAULT/COMMERCIAL INTERIORS, INC.	033
11/10/97	MOTION FOR DEFAULT	034
02/10/98	AFFIDAVIT OF PLAINTIFF'S ATTORNEY FEES	035-036
02/10/98	AFFIDAVIT OF ATTORNEY FEES	037-039
02/10/98	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OF FORECLOSURE AND FOR ATTORNEY'S FEES	040-048
02/19/98	DEFENDANT'S MOTION FOR DENIAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OF FORECLOSURE	049-156

AND FOR ATTORNEY'S FEES

03/19/98	NOTICE OF SALE	157
03/19/98	FINAL DISPOSITION FORM	158
03/19/98	SUMMARY JUDGMENT OF FORECLOSURE, BK 8888 PG 94	159-162
03/24/98	DEFENDANTS' MOTION FO[R] AN ORDER TO AMEND, ALTER RESCIND JUDGMENT MADE MARCH 19, 199S, AND AN ORDER FOR REHEARING	163-165
03/24/98	NOTICE OF APPEAL, BK 8890 PG 1818	166
06/03/98	CERTIFICATE OF CLERK	

****

DUVAL COUNTY HOUSING FINANCE AUTHORITY

Richard S. Browdy - Chairman
Artie S. Hope - Vice Chairman
Catherine L. Childers - Secretary
Hugh H. Jones, Jr. - Member
Percy Williamson - Member

Nathan Krestul - Executive Director

April 18, 1997

via facsimile: (904) 348-0957

Citizens for Positive Affirmation, Inc.
ATTN: Mr. John W. Demps, Sr., Consultant
1650 Art Museum Drive, #11
Jacksonville, FL 32207

Re: Loan request for Lot 7 Block 1, Lake Shore Terrace, Unit 1, P.B. 21, Page 66 CPR, Duval County, Florida; commonly known as 5713 Beverly Circle, Jacksonville, Florida

Dear Mr. Demps:

Please be advised that the DCHFA, as administrator of the Jacksonville Housing Trust Fund, commits 48,000.00 in accordance with the subject loan request, which is included in this letter by reference.

The construction loan commitment is subject to the following contingencies:

- **Replacement of the general contractor listed in the application. This requirement is due to pending foreclosure litigation between Mr. McDuffe**

individually and doing business as D and M Contracting Company and the lender.

- Provision of clear title insurance policy.
- Administration of the progress draws in the following stages:

1.	Mobilizations and demolition	20%
2.	Structural and Roofing	20%
3.	Rough-in and inspection of plumbing, electrical and HVAC	20%
4.	Drywall completion, trim and cabinet installation	20%
5.	Completion, provision of mechanics lien releases, contractors affidavits	20%

- Loan interest rate 0%
- Loan term One year from date of loan closing

We understand that the contributing company, Barnett Bank of Jacksonville, N.A., will have first right to make the end loan.

Please advise me as to when Citizens for Positive Affirmation Inc., will be ready to move forward with this transaction.

Sincerely,

Nathan Krestful
Executive Director

NK:rz

AREA CODE 04-630-2092/FAX 904-63-2937 / 231 E. FORSYTH STREET, SUITE 430 / JACKSONVILLE, FLORIDA 32202

ORDINANCE 95-1009-680

CERTIFICATE OF AUTHENTICATION

ENACTED BY THE COUNCIL

DECEMBER 12, 1995

_____

DICK KRAVITZ
COUNCIL PRESIDENT

ATTEST: **APPROVED:** DEC. 19 1995

BEVERLY S. DOMEN, CMC
SECRETARY TO THE COUNCIL

_____
JOHN DELANEY,
MAYOR

Introduced by the President of the Council at the request of the Mayor.

ORDINANCE 95-1009-680

AN ORDINANCE APPROPRIATING 2,982,000 IN FEDERAL FUNDS TO ESTABLISH THE HOME INVESTMENT PARTNERSHIPS PROGRAM FROM THE PERIOD OCTOBER 1, 1995 THROUGH SEPTEMBER 30, 1996; PROVIDING FOR AWARD AND EXECUTION OF CONTRACTS, LOANS AND GRANTS; AUTHORIZING 9 FULL-TIME POSITIONS IN THE CITY'S FULL-TIME EMPLOYEE CAP AND 8320 HOURS IN THE CITY'S PART-TIME EMPLOYEE CAP; APPROPRIATING PROGRAM INCOME AND INTEREST INTO THE PROGRAMS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has been notified by the United States Department of Housing and Urban Development that it will receive an entitlement award under the HOME Investment Partnerships Act; and

WHEREAS, portions of the grant are designed to fund citizen groups of nonprofit organizations to provide affordable housing services not available from City agencies; and

WHEREAS, there is a need for flexibility in the utilization of funds so that housing services and improvements can be provided by private for-profit entities as well as public agencies; now therefore,

BE IT ORDAINED by the Council of the City of Jacksonville.

Section 1. Public Interest. The grant projects generally described in the Consolidated Plan of the City of Jacksonville to the United States Department of Housing and Urban Development, for the fiscal period beginning on October 1, 1995 and ending on September 30, 1996, specifically in the HOME Program Description is attached hereto as Attachment A and by this reference made a part hereof.

Section 2. Awarding and Executing Contracts. In accordance with the provisions of Chapter 126, Ordinance Code, the Mayor is authorized to enter into contracts with organizations, Private individuals and agencies and with citizen's groups to carry out affordable housing Activities, utilizing funds from the appropriations in Section 3 hereof for the amount and purpose Described in Section 3 hereof and in the HOME Program Description. Such contracts with Agencies not in accordance with Chapter 126, Ordinance Code, must comply with Chapter 118, Ordinance Code.

Section 3. Grant Revenues Appropriated. For the fiscal period beginning October 1, 1995 and ending September 30, 1996, within the City's budget, there is hereby appropriated the sums on BT #011, attached hereto and by this reference made a part hereof as Attachment B. If the United States approves a different allocation of funds than is appropriated in this section, the Mayor shall transmit a supplementary budget to the Council for approval in accordance with the United States government's approved allocation. The Mayor's transfer authority is limited to Amounts within the administrative activities line items listed on BT #011, and transfers from Program to program are prohibited without prior approval of the Council acting by resolution or ordinance.

Section 4. Authorizing Full-time Positions and Temporary Hours. There is hereby authorized for the HOME Program, nine (9) full-time positions and 8,320 temporary hours and the same authorized in the City's full-time and part-time, respectively, employee caps. (RC #11, attached hereto and by this reference made a part hereof as Attachment C).

Section 5. Expenditure of Appropriated Administrative Budget Funds. Funds approached herein for personnel administrative budget purposes for the period beginning October 1, 1995 and ending September 30, 1996 shall be expended in accordance with the administrative allocations shown in Attachment C attached hereto. All adjustments in base salary rates and fringe benefits shall be in accordance with laws, rules, regulations and policies applicable to, or of, the City.

Section 6. HOME Revenue Fund. There is hereby established a Revenue Fund account into which all proceeds and program income, including rental payments, pursuant to programs funded from revenues made available by the United States under the HOME Investment Partnerships Act, shall be made, and accrued interest earned, shall be deposited, and from which Funds shall only be disbursed for uses in accordance with federal HOME program guidelines of the U.S. Department of Housing and Urban Development. Programs will be administered in compliance with applicable federal, state and local laws, rules and regulations as outlined in the HOME Investment Partnerships Program 1995-1996, Mission Statement and Programs, attached hereto as Attachment E and by this reference made a part hereof, using forms and procedures developed by the Community Development Division within approved budget limits.

Loans and grants under $100,000 may be approved within the Department of Planning and Development. Loans and grants in excess of $100,000 will be approved by Council for execution by the Mayor and Corporation Secretary.

Section 7. Carry Forward and Lapse of Expenditures. The funds and projects listed on the Schedule of Projects Not Lapsed, attached hereto as Attachment D and by this reference made a part hereof, shall carry over and be available for expenditure in the 1995-1996 fiscal year. The amount carried over to the new fiscal year shall be unexpended, unencumbered and unimpounded balances on September 30th of the year end. Transfer from any carry over line item to any other line item shall be made only with Council approval. All lapsed funds will be transferred to Account No. 689794-9096 for further appropriation by the Council.

Section 8. Effective Date. This ordinance shall become effective upon signature of the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

_____

Senior Assistant General Counsel

GAS:awb:/9/15/95:bt#011.crd/mbyc3